



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Benjamin D. Wood, Esq.  
William J. McGinley, Esq.  
Patton Boggs LLP  
2500 M Street, NW  
Washington, DC 20037

**FEB 26 2016**

RE: MUR 6646  
Matthew Doheny

Dear Messrs. Wood and McGinley:

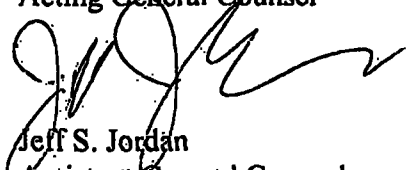
On September 19, 2012, the Federal Election Commission notified your client, Matthew Doheny, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On February 23, 2016, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe Matthew Doheny violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1). Accordingly, the Commission closed its file in this matter on February 23, 2016.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Jeff S. Jordan at (202) 694-1650.

Sincerely,

Daniel A. Petalas  
Acting General Counsel

BY:   
Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination and  
Legal Administration

Enclosure  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENTS: Matthew Doheny  
6 David Hilty

MUR 6646

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8 **I. INTRODUCTION**

9 This matter was generated by a Complaint alleging violations of the Federal Election  
10 Campaign Act of 1971, as amended (the "Act") by Respondents Matthew Doheny ("Doheny")  
11 and David Hilty ("Hilty"). It was scored as a low-rated matter under the Enforcement Priority  
12 System, a system by which the Federal Election Commission ("Commission") uses formal  
13 scoring criteria as a basis to allocate its resources and decide which matters to pursue.

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 Complainant Julia Brownley<sup>1</sup> alleges that the Committee accepted contributions from  
16 two individuals in excess of the limitations of the Act. Compl. at 1. Complainant bases her  
17 allegations on information from the Committee's 2012 July Quarterly Report ("July Quarterly  
18 Report"), which discloses two contributions from Respondents Matthew Doheny and David  
19 Hilty, each totaling \$5,000. *Id.* at 1-2; *see also id.*, Attach. A at 1-3 (pages from July Quarterly  
20 Report disclosing Doheny and Hilty contributions). The Committee reported receiving the  
21 contributions on June 28, 2012, after California's June 5 primary election. *Id.* The July  
22 Quarterly Report reflects that the Committee designated \$2,500 of each contribution to both the  
23 primary and general elections. *Id.*<sup>2</sup> The Complainant asserts that the Committee could only  
24 designate the contributions to the primary election if both Doheny and Hilty "made their

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<sup>1</sup> Complainant defeated Strickland in the 2012 general election, and currently represents the 26th Congressional District.

<sup>2</sup> *See also* Committee's amended 2012 July Quarterly Report, filed on September 5, 2013, at 40-41, 43-44.

1 contributions on or before June 5,” the primary election date, and the Committee deposited them  
2 within ten days of receipt. *Id.* at 2. Furthermore, the Complainant states that the Committee  
3 disclosed no primary debt, and as such, “had no debts for which the contributions could have  
4 been intended to retire,” thus presumably exceeding the applicable limitations of the Act.<sup>3</sup> *Id.*

5 The Committee responds that Doheny and Hilty made their contributions via credit card  
6 prior to the primary election, and that “it was both” Doheny’s and Hilty’s “intent to contribute  
7 towards the Primary Election.” Committee Resp. at 1. The Committee also maintains that it  
8 attempted to process the credit card transactions before and after the primary election, but could  
9 not “get them through” until “the date in question” (*i.e.*, June 28, 2012). *Id.* The Committee  
10 states that “[s]ince [the] donations were dated before the election . . . they were to be applied to  
11 the Primary.” *Id.* The Committee adds that it deposited the contributions within the ten-day  
12 period after processing the transactions. *Id.*

13 The Committee’s Response includes copies of contribution information forms from  
14 Doheny and Hilty, which reflect \$5,000 in contributions from their respective credit card  
15 accounts. *Id.* at 3, 5. The undated forms do not indicate an election designation, although a  
16 statement on each form states that “[f]or contributions to both the primary and general election  
17 funds, individuals may contribute up to \$5,000 . . . .” *Id.* The bottom of each form also provides  
18 that “[a]n individual may contribute up to \$2,500 for the primary election and up to \$2,500 for  
19 the general election. Individuals may write one check for \$5,000 and indicate ‘Primary/General’  
20 in the memo of the check.” *Id.* The forms do not appear to include guidance on designating  
21 credit card contributions.

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<sup>3</sup> The Act and Commission regulations prohibited individuals from making contributions to any candidate and his authorized committees in excess of \$2,500 per election during the 2011-2012 election cycle. *See* 52 U.S.C. § 30116(a)(1)(A), 11 C.F.R. § 110.1(b)(1). *See also* 52 U.S.C. § 30116(f), 11 C.F.R. § 110.9 (prohibiting candidates and committees from knowingly accepting contributions that exceed the limit).

1           The Committee's Response also includes two copies of what appear to be computer-  
2     generated forms labeled "Donation Report" from a Committee consultant. *Id.* at 2, 4. *See also*  
3     Doheny Resp., Ex. A (stating that Committee consultant Joe Justin provided internal donation  
4     reports documenting the June 4, 2012 contributions). Each report displays the contributor's  
5     name, address, occupation, and employer information, and reflects the date at the top and bottom  
6     of each document. Committee Resp. at 2, 4.

7           If the contributors made the contributions prior to the primary election on June 5, 2012,  
8     any excessive portions could have been redesignated to the general election. Under 11 C.F.R.  
9     § 110.1(b)(6), "a contribution shall be considered to be made when the contributor relinquishes  
10    control over the contribution." Further, a contribution by credit card is considered to be received  
11    when the contributor's authorization to charge the credit card is received. Advisory Opinion  
12    1990-04 (American Veterinary Medical Association PAC); *see also* 11 C.F.R. § 102.8 (stating  
13    "Date of receipt shall be the date such person obtains possession of the contribution"). Here,  
14    Doheny and Hilty appeared to have relinquished control of their contributions on June 4, 2012,  
15    and the Committee received their authorizations that same day. Committee Resp. at 2, 4.  
16    Accordingly, the Committee should have reported the date of receipt in its July Quarterly Report  
17    as June 4, not June 28. *See* 11 C.F.R. § 104.8 (requiring a political committee to report the date  
18    of receipt for contributions).

19           The record reflects that half of each contribution was apparently intended to be  
20    designated to the primary and general elections, respectively. Specifically, the Doheny  
21    "Donation Report" reflects that he contributed a total of \$5,000, and designated \$2,500 each for  
22    the primary and general elections, via a payment through his VISA credit card on June 4, 2012.  
23    Committee Resp. at 2. In addition, the report displays a handwritten notation that states, "\$5,000

1 – processed & already in,” along with “G12 - \$2500” and “P12 - \$2500.” *Id.* Separately,  
2 Doheny confirms that he made his contribution of \$5,000 on June 4, 2012, not on June 28, 2012,  
3 as the Complaint alleges. Doheny Resp. at 1-2.<sup>4</sup>

4 Similarly, the Hilty “Donation Report” reflects that he contributed a total of \$5,000, and  
5 designated \$2,500 each for the primary and general elections, making payment through his  
6 American Express credit card on June 4, 2012. Committee Resp. at 4. Hilty’s report also  
7 displays a handwritten note that states, “\$5,000 Amex – processed and already in,” as well as  
8 “6/28/12,” “G12 P12, \$2,500 each.” *Id.* Separately, Hilty responded that he made a \$5,000  
9 contribution to the Strickland campaign on June 4, 2012, “by providing a signed credit card  
10 authorization form,” and that it represented a \$2,500 contribution to the primary election and a  
11 \$2,500 contribution to the general election. Hilty Resp. at 1. Hilty contends that he “has no  
12 knowledge of how his contribution was handled by [the Committee] after he relinquished  
13 control,” and “has no knowledge as to why his 2012 primary contribution was reported . . .  
14 disclosing a contribution date of June 28, 2012.” *Id.*<sup>5</sup>

15 The record suggests that Doheny and Hilty made their contributions before the primary  
16 election. The instructions on the contributor information forms provided guidance as to how  
17 each contributor could designate his contribution where a check was used. Committee Resp. at  
18 3, 5. There was no guidance given on the form addressing credit card contributions. Since the  
19 form permitted contributors to make a \$5,000 donation and Doheny and Hilty made their  
20 contributions before the primary election, the Committee could have presumed the contributions

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<sup>4</sup> Doheny requested a refund of his primary contribution “out of an abundance of caution,” though to date, the Committee has not disclosed any such refund. *Id.*, Ex. B.

<sup>5</sup> Hilty requested a refund of his primary contribution “out of an abundance of caution,” though to date, the Committee has not disclosed any such refund. *Id.*, Ex. B.

1 were intended to be apportioned between the primary and general elections. *See* 11 C.F.R.  
2 § 110.1(b)(5)(ii)(B). In light of the timing of the contributions, the lack of instructions provided  
3 by the Committee concerning the use of credit cards, and the ability of the Committee to seek  
4 redesignation of the contributions, the Office of General Counsel recommends that the  
5 Commission find no reason to believe that Respondents Matthew Doheny and David Hilty  
6 violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

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